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38 CFR Ch. I (7–1–04 Edition)

general power of attorney shall remain in effect as to any new or reopened claim.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

[43 FR 46535—46537, Oct. 10, 1978, as amended at 53 FR 52421, Dec. 28, 1988; 68 FR 8546, Feb. 24, 2003]

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Department of Veterans Affairs installations.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

[68 FR 8547, Feb. 24, 2003]

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or organization.

(b) Accreditation shall be canceled at such time a determination is made that any requirement of §14.629 is no longer met by an agent, attorney, or representative.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following:

(1) Violation of or refusal to comply with the laws administered by the Department of Veterans Affairs or with the regulations governing practice before the Department of Veterans Affairs;

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of request for evidence by the Department of Veterans Affairs, or willfully withholding an application for benefits.)

(d) Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before the Department of Veterans Affairs demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

(e) As to cancellation of accreditation under paragraphs (b), (c) or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of §14.629, improper conduct, or incompetence, the Regional Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.

(1) If the result of the inquiry does not justify further action, the Regional Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the Regional Counsel shall take the following action:

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the suspension and of an intent to cancel accreditation. The notice to the representative will also state the reasons for the suspension and impending cancellation, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for

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a reasonable period upon a showing of sufficient cause.

(ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel accreditation. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, the Regional Counsel shall forward the record to the General Counsel for final determination.

(f) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the Regional Counsel. The hearing officer will have authority to administer oaths. A member of the Regional Counsel's office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the party requesting the hearing, an appropriate Department of Veterans Affairs official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Regional Counsel within 10 working days after the close of the hearing. The Regional Counsel will immediately forward the entire record to the General Counsel for decision.

(g) The decision of the General Counsel is final. The effective date for termination of accreditation shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel's office for 3 years.

(Authority: 38 U.S.C. 501, 5902, 5904)

[53 FR 52422, Dec. 28, 1988]

§ 14.634 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity.

(Authority: 38 U.S.C. 5903, 5904)

[43 FR 46535—46537, Oct. 10, 1978. Redesignated and amended at 57 FR 4104, Feb. 3, 1992; 68 FR 8547, Feb. 24, 2003]

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Department of Veterans Affairs facility in which space is desired and should set forth:

(1) The number of full-time paid representatives who will be permanently assigned to the office;

(2) The number of secretarial or other support staff who will be assigned to the office;

(3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and

(4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or